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Filing date: **10/08/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92056067
Party	Defendant Mother's Nutritional Center, Inc.
Correspondence Address	JESSICA C BROMALL JEFFER MANGELS BUTLER MITCHELL LLP 1900 AVENUE OF THE STARS, 7TH FLOOR LOS ANGELES, CA 90067 UNITED STATES trademarkdocket@jmbm.com
Submission	Motion for Summary Judgment
Filer's Name	Jessica C. Bromall
Filer's e-mail	trademarkdocket@jmbm.com
Signature	/S/ JESSICA C. BROMALL
Date	10/08/2013
Attachments	2013-10-8 MNC's MSJ.pdf(1030332 bytes)

ANIN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Ava Ruha Corporation dba Mother's Market &
Kitchen,

Petitioner,

v.

Mother's Nutritional Center, Inc.,

Respondent.

Cancellation No. 92/056,067
(Cancellation No. 92/056,080 consol)

Reg. No. 3,675,056

Mark: MOTHER'S NUTRITIONAL
CENTER

Reg. No. 3,675,020

Mark: MOTHER'S (Stylized)

Registration Date: September 1, 2009

RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

Respondent Mother's Nutritional Center, Inc. ("Respondent") hereby submits its Motion for Summary Judgment (the "Motion") of these consolidated proceedings in its favor, and against petitioner Ava Ruha Corporation dba Mother's Market & Kitchen ("Petitioner") on the ground that, as a matter of law, Petitioner's claims are barred by laches.

I. INTRODUCTION

This is a classic case of laches. Respondent has been using its MOTHER'S and MOTHER'S NUTRITIONAL CENTER ("Respondent's Marks") for its chain of retail grocery stores focused on the federal supplemental Food Program for Women, Infants and Children (WIC) since 1995. Petitioner learned about Respondent, its grocery stores, and Respondent's Marks, some time prior to February 5, 1998, at which time it sent Respondent a cease and desist letter. Respondent responded to the cease and desist letter, refuting Petitioner's allegations.

Despite Respondent's clear statement that intended to continue to use Respondent's Marks, Petitioner did not further object to Respondent's use of Respondent's Marks. It filed no

lawsuit. It sought no injunction. In fact, it took no action whatsoever until filing the instant actions for cancellation.

Believing that Petitioner had abandoned its baseless allegations of infringement, Respondent invested in its stores, and steadily built up goodwill in Respondent's Marks. During Petitioner's nearly 15 years of silence, Respondent grew from a single grocery store in 1995, to a chain of more than 70 stores in August 2012, when the cancellation actions were filed. In the more than three years that elapsed between the publication of Respondent's applications to register Respondent's Marks and the filing of the cancellation action, Petitioner added at least 15 stores, and from 2009, when the applications were published, through the end of 2012, Respondent spent in excess of \$7.5 million in promoting Respondent's Marks and its services offered thereunder.

Now, after nearly 15 years of acquiescence, after Petitioner seeks to take action against Respondent's Marks. Petitioner unreasonably delayed in taking action, and that delay prejudiced Respondent, who, in reliance of Petitioner's inaction, expended tens of millions of dollars growing its business from a single store to more than 70 stores. Accordingly, summary judgment in Respondent's favor is appropriate. Respondent's Motion should be granted.

II. STATEMENT OF RELEVANT FACTS

Respondent began using Respondent's Marks for its chain of grocery stores focusing on WIC program participants in 1995, and has continuously operated its grocery stores since that time. Declaration of Juan-Carlos Monnaco ("Monnaco Decl."), ¶ 2. Respondent has, throughout the entirety of its existence, operated its grocery stores in Southern California. Monnaco Decl., ¶¶ 2-3.

It is undisputed that Petitioner has had actual knowledge of Respondent since prior to February 5, 1998, when its counsel sent Respondent a cease and desist letter. Monnaco Decl., ¶ 4, Exh. A. On February 13, 1998, counsel for Respondent responded to the cease and desist letter stating that its belief that, due to the differences between the parties' names and parties' services, as well as the plethora of third-party retail establishments also using names incorporating the common term "Mother's", no confusion was likely. *Id.* at ¶ 5, Exh. B.

Respondent clearly communicated to Petitioner that it intended to continue using Respondent's Marks. *Id.* Respondent continued advertising Respondent's Marks, and continued to expand and add additional stores. *Id.* at ¶¶ 7-10. Nonetheless, Petitioner took no action against Respondent, or its use or registration of the MOTHER'S and MOTHER'S NUTRITIONAL CENTER trademarks for nearly fifteen years, until it filed the instant cancellation actions. *Id.* at ¶ 6.

The applications for Respondent's Registrations, which were based on actual use in commerce, were filed on November 29, 2007 and January 10, 2009, and were both published for opposition on June 16, 2009. Declaration of Jessica C. Bromall ("Bromall Decl."), ¶¶ 4-5, Exhs. C-F. Petitioner did not oppose Respondent's applications. *Id.* Respondent's Registrations both issued on September 1, 2009. *Id.* at ¶ 6, Exhs. G-H. Petitioner did not initiate the instant cancellation action until August 21, 2012, more than three years after the applications for the Registrations were published for opposition, and nearly fifteen years after Petitioner became aware of Respondent's use of Respondent's Marks.

In February 1998, Respondent had been using Respondent's Marks for less than three years. Monnaco Decl., ¶ 2. At that time, Respondent was operating only 13 stores under Respondent's Marks. In view of Petitioner's silence following its 1998 letter, Respondent

reasonably assumed that Petitioner had abandoned its objection to Respondent's use of Respondent's Marks. From 1998 through July 2009, when the period for opposing the applications for the Registrations had closed, Respondent had invested significant time and energy in promoting and growing its business. *Id.* at ¶¶ 6-9.

Between February 1998 and July 2009, Respondent grew from only 13 stores, to more than 55 stores. *Id.* at ¶¶ 8-9. Between July 2009, when the period for opposing the applications for the Registrations closed, and August 2012 when the cancellation actions were filed, Respondent invested more than \$7 million to advertise and promote its services offered under Respondent's Marks, and added at least 15 new stores. *Id.* at ¶¶ 8-10. In total, during the fifteen years in which Petitioner sat silently on its rights, Respondent grew from less than 15 stores to a chain of more than 70 stores. *Id.* at ¶ 7-9.

III. LEGAL STANDARD FOR SUMMARY JUDGMENT

Summary judgment should be granted where there are no genuine disputes as to any material fact, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. Pro. 56; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-248 (1986). “[T]here is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. *If the evidence is merely colorable . . . or is not significantly probative, . . . summary judgment may be granted.*” *Anderson*, 477 U.S. at 249-50 (citations omitted). To avoid summary judgment, Petitioner must “go beyond the pleadings and . . . designate specific facts showing that there is a genuine issue for trial.” *Celotex Corporation v. Catrett*, 477 U.S. 317, 325, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986) (internal quotes omitted).

IV. AS A MATTER OF LAW, PETITIONER'S ACTION IS BARRED BY LACHES

To establish the defense of laches, Respondent “must show undue or unreasonable delay by plaintiff in asserting its rights, and prejudice to defendant from the delay.” *Fishking Processors Inc. v. Fisher King Seafoods Ltd.*, 83 U.S.P.Q.2d 1762, 1766 (T.T.A.B. 2007); 58 U.S.P.Q.2d 1460, 1462-63, 245 F.3d 1359 (Fed. Cir. 2011). Here, there is no genuine dispute of material fact as to either element. Thus, Respondent is entitled to judgment in its favor as a matter of law.

A. Unreasonable Delay

The period of delay is measured from the date on which the applications for Respondent's Registrations were published for opposition – June 16, 2009. *See Teledyne Technologies, Inc. v. Western Skyways, Inc.*, 78 U.S.P.Q.2d 1203, 1210 (T.T.A.B. 2006) (where petitioner has actual knowledge of respondent's business activities under the registered mark, laches period runs from date of publication); *see also Christian Broadcasting Network Inc. v. ABS-CBN International*, 84 U.S.P.Q.2d 1560, 1572 (T.T.A.B. 2007) (same). Where, as here, the petitioner has known about the use of the challenged mark prior to the time when the registrant filed the application or registration at issue, the Board may also consider that time period in determining whether a delay was reasonable. *See James Burrough Ltd. v. La Joie*, 162 U.S.P.Q. 269 (T.T.A.B. 1969); *Bigfoot 4x4 Inc. v. Bear Foot Inc.*, 5 U.S.P.Q.2d 1444, 1448-49 (T.T.A.B. 1987).

Here, Petitioner delayed more than three years from when Petitioner's applications for the Registrations were published for opposition. Moreover, at the time Petitioner's applications for the Registrations were published for opposition, Petitioner had already been aware of, and taken no action against, Respondent's use of its Marks for the services in Respondent's

registrations for more than 11 years. Petitioner's total delay in taking action against Respondent's marks is at least 14 and a half years. Moreover, this entire period of delay commenced following Petitioner's failure to take any action following Respondent's written response refuting the positions taken by Petitioner in its February 1998 cease and desist letter.

As a matter of law, this extended period of delay is unreasonable. *James Burrough Ltd.*, 162 U.S.P.Q. 269 (T.T.A.B. 1969) (five years inaction following sending of cease and desist letter constituted laches and estopped opposition to registration); *Bigfoot 4x4 Inc.*, 5 U.S.P.Q.2d at 1448-49 (T.T.A.B. 1987) (two and a half year delay is "an almost classic example of laches and/or acquiescence" where "opposer's knowledge coupled with the silence as to any objections regarding applicant's use of the mark created an estoppel herein where applicant . . . acted on this silence by opposer to build up its business and the goodwill").¹

B. Prejudice

As a matter of law, Petitioner's unreasonable delay resulted in prejudice to Respondent. In 1998, at the time it received Petitioner's cease and desist letter, Respondent owned and operated only 13 stores. When no action was taken following Respondent's response to Petitioner's cease and desist letter, between 1998 and 2009, Respondent's expanded to more than 55 stores. Between July 2009 and August 2012, Respondent expanded from approximately 58 stores to 73 stores. Respondent has also spent in excess of \$7million since 2009, and much more since the February 1998, to promote Respondent's Marks and Respondent's grocery services.

Over the past 14-plus years, "Respondent was given reason to presume that there would be no challenge from petitioner and, during [that] period . . . , respondent continued to open additional stores and add to its goodwill." *Marshall Field & Co.*, 25 U.S.P.Q.2d at 1335. Under

these circumstances, Respondent has been “severely prejudiced by the untimeliness of petitioner's decision to challenge the marks shown in its registrations.” *Id.*

Accordingly, as a matter of law, Respondent has been prejudiced by Petitioner's unreasonable delay.

V. CONCLUSION

For the reasons stated herein, Respondent's Motion should be granted and summary judgment should be entered in Respondent's favor.

Dated: October 8, 2013

/S/ JESSICA C. BROMALL

Rod S. Berman, Esq.
Jessica C. Bromall, Esq.
JEFFER MANGELS BUTLER & MITCHELL LLP
1900 Avenue of the Stars, Seventh Floor
Los Angeles, CA 90067
Telephone: (310) 203-8080
Facsimile: (310) 203-0567
E-mail: trademarkdocket@jmbm.com
Attorneys for Respondent MOTHER'S
NUTRITIONAL CENTER, INC.

¹ See also *Marshall Field & Co. v. Mrs. Fields Cookies*, 25 U.S.P.Q.2d 1321, 1335 (T.T.A.B. 1992) (four year delay is unreasonable); *Teledyne Technologies, Inc. v. Western Skyways, Inc.*, 78 U.S.P.Q.2d at 1210 (3 years, 8 months of unexplained delay held sufficient for laches).

DECLARATION OF JUAN-CARLOS MONNACO

1. I am Chief Financial Officer of respondent herein Mother's Nutritional Center, Inc. ("Respondent"). I have personal knowledge of the facts set forth herein, or knowledge based on the documents in my companies files in the relevant matters, and, if called as a witness, could and would competently testify thereto. I submit this declaration in support of Respondent's Motion for Summary Judgment (the "Motion").

2. Respondent has continuously used its MOTHER'S and MOTHER'S NUTRITIONAL CENTER ("Respondent's Marks") for its chain of retail grocery stores focused on the federal supplemental Food Program for Women, Infants and Children (WIC) since 1995.

3. Respondent has WIC stores throughout Southern California, and has, since 1995, operated stores in Southern California.

4. Attached hereto as Exhibit A is a true and correct copy of a letter dated February 5, 1998 that was sent to Respondent by counsel for Petitioner.

5. Attached hereto as Exhibit B is a true and correct copy of a letter dated February 13, 1998 that counsel for Respondent sent to counsel for Petitioner in response to the February 5, 1998 letter.

6. Prior to filing the instant cancellation proceedings, Petitioner had not further objected to Respondent's use or registration of MOTHER'S or MOTHER'S NUTRITIONAL CENTER, since Petitioner's counsel sent its February 13, 1998 letter. When Respondent heard nothing further from Petitioner following the February 1998 letter exchange, it assumed that Petitioner had abandoned any objection it had to Respondent's use of MOTHER'S and MOTHER'S NUTRITIONAL CENTER. In the 14-plus years between Petitioner's February 1998 letter and the filing of the instant cancellation action, Petitioner took no action to prevent Respondent's use of MOTHER'S or MOTHER'S NUTRITIONAL CENTER: it sent no letters, it filed no lawsuits, and it sought zero injunctions.

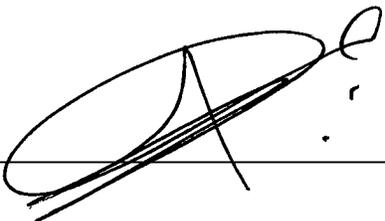
7. In February 1998, Respondent was operating only 13 grocery stores under its MOTHER'S and MOTHER'S NUTRITIONAL CENTER marks.

8. In July 2009, Respondent had expanded to at least 55 grocery stores under its MOTHER'S and MOTHER'S NUTRITIONAL CENTER marks.

9. In August 2012, Respondent had added at least 15 more stores, and further expanded to approximately 73 grocery stores under its MOTHER'S and MOTHER'S NUTRITIONAL CENTER marks.

10. Between 2009 and 2012, Respondent continued to aggressively promote its MOTHER'S and MOTHER'S NUTRITIONAL CENTER marks and its grocery services offered thereunder. In those years, Respondent spent in excess of \$7.5 million on advertising, including radio and television commercials, print advertisements, signage, flyers, community promotion, and gift with purchase campaigns.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct, and that this Declaration is executed on October 8, 2013 at Santa Fe Springs, California.



JUAN-CARLOS MÖNNACO

DECLARATION OF JESSICA C. BROMALL

1. I am an attorney licensed to practice law in the State of California and an associate at the law firm of Jeffer Mangels Butler & Mitchell LLP, counsel for respondent Mother's Nutritional Center, Inc. ("Respondent") in the above-referenced matter. I have personal knowledge of the facts set forth herein, or knowledge based on the documents in my firm's files in the relevant matters, and, if called as a witness, could and would competently testify thereto. I submit this declaration in support of Respondent's Motion for Summary Judgment (the "Motion").

2. Attached hereto as Exhibit A is a true and correct copy of a letter dated February 5, 1998 that was sent to Respondent by counsel for Petitioner.

3. Attached hereto as Exhibit B is a true and correct copy of a letter dated February 13, 1998 that counsel for Respondent sent to counsel for Petitioner in response to the February 5, 1998 letter.

4. Attached hereto as Exhibits C and D are true and correct copies of Respondent's applications to register MOTHER'S and MOTHER'S NUTRITIONAL CENTER, filed on November 29, 2007 and January 10, 2008, respectively.

5. Attached hereto as Exhibits E and F are true and correct copies of the Notices of Publication of Respondent's applications, each of which were published for opposition on June 16, 2009. Petitioner did not oppose Respondent's applications.

6. Attached hereto as Exhibits G and H are true and correct copies of Respondent's registrations for MOTHER'S and MOTHER'S NUTRITIONAL CENTER, issued on September 1, 2009.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct, and that this Declaration is executed on October 8, 2013 at Los Angeles, California.

/S/ JESSICA C. BROMALL
JESSICA C. BROMALL

EXHIBIT A

Law Offices of Richard B. Macgurn

1015 CHESTNUT AVENUE, SUITE E3
CARLSBAD, CA 92008
(760) 729-7162
FAX (760) 729-2860

February 5, 1998

Mother's Nutritional Center
5015 West Edinger Avenue
Santa Ana, CA 920704

Attn: Susan Urzua

Dear Ms. Urzua:

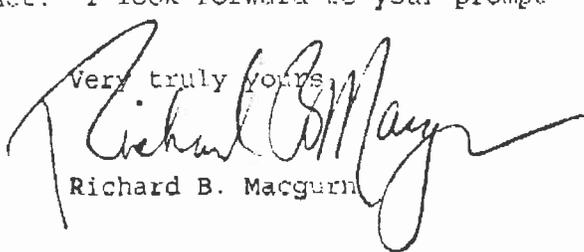
This is a follow up to our telephone conversation. I represent Ava Ruha Corporation dba Mother's Market & Kitchen. Since May 1, 1978 Mother's Market & Kitchen has operated stores in Orange County under their trademark. My client recently became aware that you are using the name "Mother's Nutritional Center" in connection with your business. As set forth below, this letter is a demand for written assurance that you will cease all use of the name "Mother's".

Mother's Market & Kitchen is the owner of a Federal Service Mark Registration covering its trademark for use in connection with restaurant and retail store services. This registration provides Mother's Market & Kitchen with the nationwide right to exclusive use of the distinctive name "Mother's". A trademark is infringed under both Federal and State statutes by any use of a name which is likely to cause confusion among the consuming public. It is our position that you infringed on my client's trademark. The consuming public is likely to believe that there is some affiliation or connection between Mother's Nutritional Center and Mother's Market and Kitchen.

Accordingly, on behalf of my client we demand that within fourteen (14) days of receipt of this letter we have your written assurance that you have ceased all use of the confusingly similar name. If you persist in using the name in spite of my client's objections, we will be forced to view your use as an obvious attempt to trade on the established goodwill associated with my client's well known name.

Should this matter not be resolved amicably and immediately we will be forced to consider bringing an action for injunctive relief, full damages and attorney fees, all as provided for by State statutes and the Lanham Act. I look forward to your prompt response.

Very truly yours,


Richard B. Macgurn

RBM:em
cc: F. Bruce Macgurn

MNC000294

EXHIBIT B

Heenan Blaikie

Jeffrey Berkowitz
Daniel H. Black*
Fred A. Fenster
Eric G. Lardiere
Daniel B. Leon
Mark K. Li
Jody Simon*
Deborah F. Sirias
B. J. Yankowitz*
Scott B. Zolke†

A California Professional
Corporation

Suite 1100
9401 Wilshire Boulevard
Beverly Hills
California 90212-2924

Telephone (310) 275 3600
Facsimile (310) 724-8340

*Also admitted in New York

†Also admitted in Georgia & Illinois

February 13, 1998

File No. ELT 1.04

VIA FACSIMILE - (760) 729-2860

Richard B. Macgurn, Esq.
2026 Chestnut Avenue
Suite E3
Carlsbad, California 92008

Re: *Mother's Nutritional Center*

Dear Mr. Macgurn:

This firm and the undersigned are counsel to Mother's Nutritional Center and are writing to you in that capacity. Your letter dated February 5, 1998 respecting Ava Ruha Corporation dba Mother's Market & Kitchen has been forwarded to the undersigned for response.

We have reviewed the assertions contained in your letter. Quite frankly, we find question begging your claim that the registration of MOTHER'S MARKET & KITCHEN vests your client with the nationwide right to exclusive use of the distinctive name "Mother's." Indeed, our search of the United States Patent & Trademark Office records reflects several registered marks incorporating the term "Mother's." In addition, there exist numerous common law uses of the term "Mother's."

As we are certain you are aware, a federal registration serves as constructive notice of your client's claim of exclusive rights *in the mark*. As a result, subsequent users of *the mark* or a mark confusingly similar to it are prohibited from using a defense of innocent adoption and use. We are not aware of any provision in the Lanham Act or any case law that would support your proposition that registration of MOTHER'S MARKET & KITCHEN would effectively preempt third parties from incorporating the term "Mother's" in trademarks or service marks. Moreover, we can find no authority whatsoever to support your claim that the term "Mother's" is a distinctive term solely adoptable by your client.

AFFILIATED WITH THE LAW OFFICES OF HEENAN BLAIKIE IN CANADA

MONTRÉAL
Suite 2500
1250 René-Lévesque Blvd. West
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Telephone (819) 373 7000
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TORONTO
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South Tower, Royal Bank Plaza
Toronto, Ontario
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Telephone (416) 360 6336
Facsimile (416) 360 8425

VANCOUVER
Suite 600
1199 West Hastings Street
Vancouver, British Columbia
Canada V6E 3T5

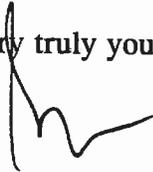
Telephone (604) 669 0011
Facsimile (604) 669 0376

Richard B. Macgurn, Esq.
February 13, 1998
Page 2

Accordingly, we reject your claims and find nothing to suggest that the subject marks are confusingly similar. Our client is well within its rights to exploit the mark MOTHER'S NUTRITIONAL CENTER. Finally, be advised that should you persist in your claims and file what we would characterize as baseless litigation against our client, we are prepared to fully defend our client's rights and will take whatever affirmative action against you and your client which may be necessary or appropriate under the circumstances.

Nothing herein contained shall be deemed to be an admission of any facts or a waiver of any right by our client with respect to the subject matter hereof, all of which rights and remedies hereby are expressly reserved. Govern yourself accordingly.

Very truly yours,



Scott B. Zolke

SBZ:dgc

cc: Mr. Larry Flores
Ms. Susan Urzua
Jeff Berkowitz, Esq.

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EXHIBIT C

Trademark/Service Mark Application, Principal Register

Serial Number: 77340519

Filing Date: 11/29/2007

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77340519
MARK INFORMATION	
*MARK	<u>\\TICRS2\EXPORT14\773\405</u> <u>\77340519\xml1\APP0002.JPG</u>
SPECIAL FORM	YES
USPTO-GENERATED IMAGE	NO
LITERAL ELEMENT	MOTHER'S
COLOR MARK	NO
*DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of the word "Mother's".
PIXEL COUNT ACCEPTABLE	NO
PIXEL COUNT	1030 x 304
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	MOTHER'S NUTRITIONAL CENTER, INC.
*STREET	13635 FREEWAY DRIVE
*CITY	SANTA FE SPRINGS
*STATE (Required for U.S. applicants)	California
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	90670
LEGAL ENTITY INFORMATION	
TYPE	corporation

STATE/COUNTRY OF INCORPORATION	California
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	035
FIRST USE ANYWHERE DATE	At least as early as 05/09/2007
FIRST USE IN COMMERCE DATE	At least as early as 05/09/2007
*IDENTIFICATION	Retail grocery stores
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 05/09/2007
FIRST USE IN COMMERCE DATE	At least as early as 05/09/2007
SPECIMEN FILE NAME(S)	<u>\\TICRS2\EXPORT14\773\405\77340519\xml1\APP0003.JP G</u>
SPECIMEN DESCRIPTION	promotional matter
ATTORNEY INFORMATION	
NAME	Rod S. Berman
ATTORNEY DOCKET NUMBER	66309-1004
FIRM NAME	Jeffer Mangels Butler & Marmaro LLP
STREET	1900 Avenue of the Stars, 7th Floor
CITY	Los Angeles
STATE	California
COUNTRY	United States
ZIP/POSTAL CODE	90067
PHONE	310-203-8080
FAX	310-203-0567
EMAIL ADDRESS	trademarkdocket@jmbm.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
OTHER APPOINTED ATTORNEY	Michael S. Sherman, Bernard R. Gans, Brian W. Kasell, Grant T. Langton, Brennan C. Swain, Manali V. Dighe, and Jessica Bromall
CORRESPONDENCE INFORMATION	
NAME	Rod S. Berman
FIRM NAME	Jeffer Mangels Butler & Marmaro LLP
STREET	1900 Avenue of the Stars, 7th Floor

CITY	Los Angeles
STATE	California
COUNTRY	United States
ZIP/POSTAL CODE	90067
PHONE	310-203-8080
FAX	310-203-0567
EMAIL ADDRESS	trademarkdocket@jmbm.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	/jessica c. bromall/
SIGNATORY'S NAME	Jessica Bromall
SIGNATORY'S POSITION	Attorney of record
DATE SIGNED	11/29/2007

Trademark/Service Mark Application, Principal Register

Serial Number: 77340519

Filing Date: 11/29/2007

To the Commissioner for Trademarks:

MARK: MOTHER'S (stylized and/or with design, see mark)

The literal element of the mark consists of MOTHER'S.

The mark consists of the word "Mother's".

The applicant, MOTHER'S NUTRITIONAL CENTER, INC., a corporation of California, having an address of

13635 FREEWAY DRIVE
SANTA FE SPRINGS, California 90670
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 035: Retail grocery stores

Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, or the applicant's predecessor in interest used the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

In International Class 035, the mark was first used at least as early as 05/09/2007, and first used in commerce at least as early as 05/09/2007, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) promotional matter.

Specimen File1

The applicant hereby appoints Rod S. Berman and Michael S. Sherman, Bernard R. Gans, Brian W. Kasell, Grant T. Langton, Brennan C. Swain, Manali V. Dighe, and Jessica Bromall of Jeffer Mangels Butler & Marmaro LLP

1900 Avenue of the Stars, 7th Floor
Los Angeles, California 90067
United States

to submit this application on behalf of the applicant. The attorney docket/reference number is 66309-1004.

Correspondence Information: Rod S. Berman

1900 Avenue of the Stars, 7th Floor
Los Angeles, California 90067
310-203-8080(phone)
310-203-0567(fax)
trademarkdocket@jmbm.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

Declaration

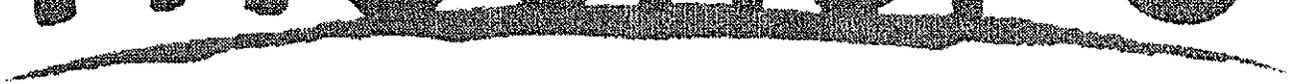
The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

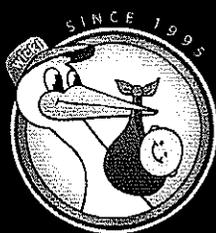
Signature: /jessica c. bromall/ Date Signed: 11/29/2007
Signatory's Name: Jessica Bromall
Signatory's Position: Attorney of record

RAM Sale Number: 3492
RAM Accounting Date: 11/30/2007

Serial Number: 77340519
Internet Transmission Date: Thu Nov 29 18:37:08 EST 2007
TEAS Stamp: USPTO/BAS-63.107.117.2-20071129183708304
596-77340519-40047e240ec52d3d9b7b51cb2ef
cf624c-DA-3492-20071129182404522384

mother's





Mother's

NUTRITIONAL CENTER



Free Groceries!

Did you know that you may qualify for Free Groceries?

Come Home To

Mother's Nutritional Center

If you are pregnant or have children under 5, you may qualify* for a federally funded food program?

Even if you work!



Make the easy call to
Mother's today!

1-888-MOTHERS

Over 45 locations to
make your life easier!

*eligibility is not determined by Mother's Nutritional Center Eligibility is determined by a local state agency.

EXHIBIT D

Trademark/Service Mark Application, Principal Register

Serial Number: 77368478

Filing Date: 01/10/2008

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77368478
MARK INFORMATION	
*MARK	<u>MOTHER'S NUTRITIONAL CENTER</u>
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	MOTHER'S NUTRITIONAL CENTER
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	MOTHER'S NUTRITIONAL CENTER, INC.
*STREET	13635 FREEWAY DRIVE
*CITY	SANTA FE SPRINGS
*STATE (Required for U.S. applicants)	California
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	90670
LEGAL ENTITY INFORMATION	
TYPE	corporation
STATE/COUNTRY OF INCORPORATION	California
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	035

FIRST USE ANYWHERE DATE	At least as early as 05/09/2007
FIRST USE IN COMMERCE DATE	At least as early as 05/09/2007
*IDENTIFICATION	Retail grocery stores
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 05/09/2007
FIRST USE IN COMMERCE DATE	At least as early as 05/09/2007
SPECIMEN FILE NAME(S)	\\TICRS2\EXPORT15\773\684 \77368478\xml1\APP0003.JP G
SPECIMEN DESCRIPTION	promotional matter
ATTORNEY INFORMATION	
NAME	Rod S. Berman
ATTORNEY DOCKET NUMBER	66309-1006
FIRM NAME	Jeffer Mangels Butler & Marmaro LLP
STREET	1900 Avenue of the Stars, 7th Floor
CITY	Los Angeles
STATE	California
COUNTRY	United States
ZIP/POSTAL CODE	90067
PHONE	310-203-8080
FAX	310-203-0567
EMAIL ADDRESS	trademarkdocket@jmbm.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
OTHER APPOINTED ATTORNEY	Michael S. Sherman, Bernard R. Gans, Brian W. Kasell, Grant T. Langton, Brennan C. Swain, Manali V. Dighe, and Jessica Bromall
CORRESPONDENCE INFORMATION	
NAME	Rod S. Berman
FIRM NAME	Jeffer Mangels Butler & Marmaro LLP
STREET	1900 Avenue of the Stars, 7th Floor
CITY	Los Angeles
STATE	California
COUNTRY	United States

ZIP/POSTAL CODE	90067
PHONE	310-203-8080
FAX	310-203-0567
EMAIL ADDRESS	trademarkdocket@jmbm.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	/jessica c. bromall/
SIGNATORY'S NAME	Jessica Bromall
SIGNATORY'S POSITION	Attorney of record
DATE SIGNED	01/07/2008

Trademark/Service Mark Application, Principal Register

Serial Number: 77368478

Filing Date: 01/10/2008

To the Commissioner for Trademarks:

MARK: MOTHER'S NUTRITIONAL CENTER (Standard Characters, see mark)

The literal element of the mark consists of MOTHER'S NUTRITIONAL CENTER.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, MOTHER'S NUTRITIONAL CENTER, INC., a corporation of California, having an address of

13635 FREEWAY DRIVE
SANTA FE SPRINGS, California 90670
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 035: Retail grocery stores

Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, or the applicant's predecessor in interest used the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

In International Class 035, the mark was first used at least as early as 05/09/2007, and first used in commerce at least as early as 05/09/2007, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) promotional matter.

Specimen File1

The applicant hereby appoints Rod S. Berman and Michael S. Sherman, Bernard R. Gans, Brian W. Kasell, Grant T. Langton, Brennan C. Swain, Manali V. Dighe, and Jessica Bromall of Jeffer Mangels Butler & Marmaro LLP

1900 Avenue of the Stars, 7th Floor
Los Angeles, California 90067
United States

to submit this application on behalf of the applicant. The attorney docket/reference number is 66309-1006.

Correspondence Information: Rod S. Berman

1900 Avenue of the Stars, 7th Floor
Los Angeles, California 90067

310-203-8080(phone)
310-203-0567(fax)
trademarkdocket@jmbm.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /jessica c. bromall/ Date Signed: 01/07/2008
Signatory's Name: Jessica Bromall
Signatory's Position: Attorney of record

RAM Sale Number: 8408
RAM Accounting Date: 01/10/2008

Serial Number: 77368478
Internet Transmission Date: Thu Jan 10 13:44:48 EST 2008
TEAS Stamp: USPTO/BAS-63.107.117.2-20080110134448275
241-77368478-400c293e5b48a07dbc636fe018d
d73caa-DA-8408-20080104145807976738

MOTHER'S NUTRITIONAL CENTER



Mother's

NUTRITIONAL CENTER

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EXHIBIT E



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
www.uspto.gov

May 27, 2009

NOTICE OF PUBLICATION UNDER 12(a)

1. Serial No.:
77/340,519
2. Mark:
MOTHER'S
and design
3. International Class(es):
35
4. Publication Date:
Jun 16, 2009
5. Applicant:
MOTHER'S NUTRITIONAL CENTER, INC.

The mark of the application identified appears to be entitled to registration. The mark will, in accordance with Section 12(a) of the Trademark Act of 1946, as amended, be published in the Official Gazette on the date indicated above for the purpose of opposition by any person who believes he will be damaged by the registration of the mark. If no opposition is filed within the time specified by Section 13(a) of the Statute or by rules 2.101 or 2.102 of the Trademark Rules, the Commissioner of Patents and Trademarks may issue a certificate of registration.

Copies of the trademark portion of the Official Gazette containing the publication of the mark may be obtained from:

The Superintendent of Documents
U.S. Government Printing Office
PO Box 371954
Pittsburgh, PA 15250-7954
Phone: 202-512-1800

By direction of the Commissioner.

Correspondence Address:

ROD S. BERMAN
JEFFER MANGELS BUTLER & MARMARO LLP
1900 AVENUE OF THE STARS
7TH FLOOR

TMP&I

LOS ANGELES, CA 90067-4308

EXHIBIT F



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
www.uspto.gov

May 27, 2009

NOTICE OF PUBLICATION UNDER 12(a)

1. Serial No.:
77/368,478
2. Mark:
MOTHER'S NUTRITIONAL CENTER
Standard Character Mark
3. International Class(es):
35
4. Publication Date:
Jun 16, 2009
5. Applicant:
MOTHER'S NUTRITIONAL CENTER, INC.

The mark of the application identified appears to be entitled to registration. The mark will, in accordance with Section 12(a) of the Trademark Act of 1946, as amended, be published in the Official Gazette on the date indicated above for the purpose of opposition by any person who believes he will be damaged by the registration of the mark. If no opposition is filed within the time specified by Section 13(a) of the Statute or by rules 2.101 or 2.102 of the Trademark Rules, the Commissioner of Patents and Trademarks may issue a certificate of registration.

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Correspondence Address:

ROD S. BERMAN
JEFFER MANGELS BUTLER & MARMARO LLP
1900 AVENUE OF THE STARS
7TH FLOOR

TMP&I

LOS ANGELES, CA 90067-4308

EXHIBIT G

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 3,675,027

Registered Sep. 1, 2009

**SERVICE MARK
PRINCIPAL REGISTER**

mother's

MOTHER'S NUTRITIONAL CENTER, INC. (CALIFORNIA CORPORATION)
13635 FREEWAY DRIVE
SANTA FE SPRINGS, CA 90670

FIRST USE 5-9-2007; IN COMMERCE 5-9-2007.

FOR: RETAIL GROCERY STORES THAT EXCLUSIVELY FEATURE FOODS AUTHORIZED FOR PURCHASE BY PREGNANT WOMEN, NEW MOTHERS AND YOUNG CHILDREN PARTICIPATING IN THE FEDERAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC), IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

THE MARK CONSISTS OF THE WORD "MOTHER'S".

SER. NO. 77-340,519, FILED 11-29-2007.

BONNIE LUKEN, EXAMINING ATTORNEY

EXHIBIT H

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

Reg. No. 3,675,056

United States Patent and Trademark Office

Registered Sep. 1, 2009

**SERVICE MARK
PRINCIPAL REGISTER**

MOTHER'S NUTRITIONAL CENTER

MOTHER'S NUTRITIONAL CENTER, INC. (CALIFORNIA CORPORATION)
13635 FREEWAY DRIVE
SANTA FE SPRINGS, CA 90670

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

FOR: RETAIL GROCERY STORES THAT EXCLUSIVELY FEATURE FOODS AUTHORIZED FOR PURCHASE BY PREGNANT WOMEN, NEW MOTHERS AND YOUNG CHILDREN PARTICIPATING IN THE FEDERAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC), IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "NUTRITIONAL CENTER", APART FROM THE MARK AS SHOWN.

SER. NO. 77-368,478, FILED 1-10-2008.

FIRST USE 5-9-2007; IN COMMERCE 5-9-2007.

BONNIE LUKEN, EXAMINING ATTORNEY

CERTIFICATE OF SERVICE

It is hereby certified that one (1) copy of the foregoing **RESPONDENT'S MOTION FOR SUMMARY JUDGMENT** is being sent via U.S. mail to Petitioner Ava Ruha Corporation dba Mother's Market & Kitchen's attorney of record as follows:

Stephen Z. Vegh
Stetina Brunda Garred & Brucker
75 Enterprise, Suite 250
Aliso Viejo, CA 92656

Dated: October 8, 2013



Esther Silverman